

Members:

Sen. Murray Clark, Chair
Sen. Lindel Hume
Rep. Dale Sturtz
Rep. Cleo Duncan



Lay Members:

Erika Seydel

LSA Staff:

Kristin Breen, Fiscal Analyst for the Panel
Tim Tyler, Attorney for the Panel

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COMPLIANCE ADVISORY PANEL

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MEETING MINUTES

Meeting Date: October 13, 1998
Meeting Time: 10:30 A.M.
Meeting Place: State House, 200 W. Washington St., Room 156-B
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Murray Clark, Chair; Sen. Lindel Hume; Rep. Cleo Duncan; Erika Seydel.

Members Absent: Rep. Dale Sturtz.

Sen. Clark, Chair of the Compliance Advisory Panel (CAP), called the meeting to order at 10:50 a.m. Rep. Duncan noted that a few years ago, the Indiana Department of Environmental Management (IDEM) made an effort to promote voluntary compliance. She remarked that she would like to see the promotion continued and expanded.

Confined Feeding

Bruce Palin, Assistant Commissioner of IDEM's Office of Solid and Hazardous Waste Management, noted that IDEM has been working on confined feeding administrative rules since January 1998. He explained that these rules are more performance-based than prescriptive. IDEM is creating a guidance document to go along with the rules. He noted that the second notice of comment period will be published in the November 1, 1998 *Indiana Register*. The earliest date for preliminary adoption of the rules is February 1998. He pointed out that the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture are leaning toward requiring National Pollutant Discharge Elimination System (NPDES) permits for confined feeding facilities. IDEM wants the federal government to defer to states' programs. IDEM hopes to have final adoption of the rules by early summer.

In response to questions from Sen. Clark, Mr. Palin explained that the General Assembly originally established a work group to create the AW-1 guidance document. IDEM decided to maintain the work group for rule-making. Mr. Palin also explained that IDEM has completed almost 500 compliance inspections and will continue to conduct more. Mr. Palin explained that the rules provide more requirements to protect water quality. Mr. Palin noted that the design and construction requirements in the rules are only retroactive if a facility is expanding.

Indiana's Audit Privilege Statute

Dave Hensel, Assistant Commissioner of IDEM's Office of Legal Counsel, distributed a document that

outlines the EPA's concerns regarding Indiana's audit privilege statute.¹ Mr. Hensel explained that the EPA has threatened to withdraw the delegation of authority for environmental programs if the statute is not changed to address the EPA's concerns. Mr. Hensel reported that the first four concerns listed on the document -- information gathering authorities, information needed for injunctive relief, public access to information, and citizen challenge to assertion of privilege -- will be resolved with an Opinion Letter from the Indiana Attorney General's (AG) Office. Mr. Hensel explained that in order to satisfy the EPA, the audit privilege statute needs to be modified to eliminate the application of the privilege to criminal investigations and proceedings. Another modification that needs to be made is to clarify public access to information. IDEM is working with the AG's Office to resolve this issue.

Sen. Hume questioned what the incentive is to perform an audit if it could lead to a criminal investigation. Mr. Hensel noted that a company will get in trouble if it is caught in a violation. Mr. Hensel also noted that the EPA will reduce a company's fine if it self-discloses a violation. However, if an economic advantage resulted from the violation, the company must pay that amount. In response to a question from Sen. Clark, Mr. Hensel stated that the audit privilege has not yet been invoked as far as IDEM staff know. Mr. Hensel explained that the audit privilege does not get used much since the EPA is not involved. He commented that he would like IDEM to have a policy similar to the EPA's where all or part of a penalty would be waived if a company self-discloses a violation.

Tom Neltner, Assistant Commissioner of IDEM's Office of Pollution Prevention and Technical Assistance, noted that the EPA is looking at extending its policy of waiving fines to include companies that transfer ownership. Mr. Neltner then informed CAP members about the ISO-14000, an international standard for developing and implementing environmental management systems.

Bill Hayden, representing the Sierra Club, expressed his concern that those companies that do not want to do the right thing could abuse the audit privilege.

Sen. Hume emphasized that he does not want to create a situation where a violator can use the audit privilege to protect himself.

Vince Griffin, with the Indiana Chamber of Commerce, agreed with Sen. Hume. Mr. Griffin then commented that the audit privilege is a marvelous tool that promotes good businesses to be better. He explained that if a company is in violation of a permit or law, it still has to report it to IDEM.

In response to questions from Sen. Clark, Mr. Hensel indicated that IDEM will make a proposal to the General Assembly this session regarding the audit privilege statute. Mr. Hensel added that the IDEM Commissioner's long-term goal with regard to the audit privilege is to retain the authority for environmental programs that the EPA has delegated to IDEM.

Mr. Neltner noted that IDEM encourages businesses to implement the ISO-14000.

In response to a question from Sen. Clark, Mr. Neltner explained that it is hard to market the audit privilege before the differences between the state and the EPA are resolved.

Other Business

Mr. Neltner provided CAP members with a brochure on the Mercury Awareness Program.² He then announced that Paula Smith is now the Branch Chief for the Office of Voluntary Compliance.

The third and final meeting of the CAP will be November 10 at 1:30 p.m. in Room 156-A. The Panel will review and approve the final report. Sen. Clark adjourned the meeting.

¹This document is on file in the Legislative Information Center (LIC), Room 230, State House, Indianapolis, Indiana. The telephone number of the LIC is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

²This brochure is on file in the LIC (see footnote 1).